

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

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TODD KREISLER,

Plaintiff,

v.

MCDONALD'S CORPORATION,
a Foreign corporation, and
MARC DILORENZO, TRUSTEE,

**Civil Action No. 09 Civ. 9358 (DAB)
ECF CASE**

**MOTION FOR DEFAULT
JUDGMENT AS TO DEFENDANT
MARC DILORENZO, TRUSTEE**

Defendants.

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Plaintiff, TODD KREISLER, by and through his undersigned counsel, hereby files this Motion for Default Judgment seeking an Entry of Default Final Judgment against defendant, MARC DILORENZO, TRUSTEE, and as grounds therefore states as follows:

1. The Plaintiff filed a Complaint on November 12, 2009, for the defendants' lack of compliance with Title III of the Americans with Disabilities Act, the Administrative Code of the City of New York § 8-107 et. seq., (hereinafter referred to as the "New York City Human Rights Law"), and the New York State Executive Law § 296 et. seq., (hereinafter referred to as the "New York State Human Rights Law"). A copy of the Summons and Complaint are attached hereto as Exhibit "A".

2. Service of the Summons, Complaint, Civil Cover Sheet, Individual Practices of Judge Deborah A. Batts and ECF Rules for the Southern District of New York was served on defendant MARC DILORENZO, TRUSTEE on February 19, 2010 at the defendant's last known address located in New York, in accordance with New York statutes. A further investigation by the Plaintiff revealed that the defendant MARC DILORENZO, TRUSTEE's last known address

was located in Florida. On March 11, 2010, the defendant, MARC DILORENZO, TRUSTEE, was served in Florida, in accordance with Florida statutes.

3. The Complaint seeks, *inter alia*, an Order requiring the defendants' to make all necessary modifications to the restaurant to eliminate all barriers that prevent full and equal access by individuals with mobility impairments to the full extent required by Title III of the Americans with Disabilities Act. The Complaint also seeks compensatory damages in the amount of one-thousand dollars (\$1000.00) based on the defendants' violation of the New York City Human Rights Law and New York State Human Rights Law.

4. Issue was joined by defendant MCDONALD'S CORPORATION by service of an Answer on February 12, 2010.

5. The pleading to which no response has been made by defendant MARC DILORENZO, TRUSTEE was properly served. The defendant, MARC DILORENZO, TRUSTEE, is not an infant, mentally incompetent or in the military service of the United States.

6. On April 6, 2010, the Clerk of the Court entered a Certificate of Default against defendant MARC DILORENZO, TRUSTEE for its failure to file its answer or otherwise move with respect to the Complaint within the time limits prescribed by the Federal Rules of Civil Procedure. Please see attached Exhibit "B".

7. To date, defendant, MARC DILORENZO, TRUSTEE, has not filed its answer or otherwise moved with respect to the Complaint, nor has it appeared in this action.

8. Pursuant to the Clerk's Default and the relief requested in the Complaint, the Plaintiff hereby submits a proposed Default Final Judgment to the Court simultaneously with the filing of this motion. Please see attached Exhibit "C".

9. Since Defendant has violated the Americans with Disabilities Act, the New York City Human Rights Law and the New York State Human Rights Law, the Plaintiff respectfully requests that the Final Default Judgment require that defendant, MARC DILORENZO, TRUSTEE, remove architectural barriers as follows: (i) Provide an accessible entrance and install a ramp with appropriate slope, and/or otherwise provide an accessible entrance. (ii) Provide an entrance door that does not require more force to open than is permitted. (iii) Provide adequate directional and accurate informational signage. (iv) Provide an accessible automatic teller machine with controls located within a permissible reach range. (v) Provide a safe and accessible means of egress for emergencies.

10. The Plaintiff further requests that the Final Default Judgment require Defendant to alter the facilities to make it fully accessible to and useable by individuals with disabilities to the full extent required by Title III of the Americans with Disabilities Act.

11. The Plaintiff respectfully requests that the Plaintiff be awarded one-thousand dollars (\$1000.00) in compensatory damages based on the Defendant's violation of the New York City Human Rights Law and the New York State Human Rights Law.

12. The Plaintiff respectfully requests that this Honorable Court order Defendant to comply with the terms of this Final Judgment within sixty (60) days of the entry of this judgment.

13. In addition, the Plaintiff respectfully requests that the Court retain jurisdiction relating to the Plaintiff's attorneys' fees, and said motion shall be filed within thirty (30) days of entry of this Final Judgment.

14. Based upon the foregoing, Plaintiff respectfully requests that its Motion for Default Judgment be granted.

WHEREFORE, based on the foregoing and pursuant to the Clerk's Default dated April 6, 2010, the Plaintiff respectfully requests that this Honorable Court issue a Final Judgment against the defendant, MARC DILORENZO, TRUSTEE, in accordance with the relief sought in Plaintiff's Complaint, as well as any further relief this Court deems equitable and just.

Dated: White Plains, New York
April 9, 2010

Respectfully submitted,

s/ Adam T. Shore
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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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TODD KREISLER,

Plaintiff,

Civil Action No. 09 Civ. 9358 (DAB)

v.

MCDONALD'S CORPORATION,
a Foreign corporation, and
MARC DILORENZO, TRUSTEE,

**ORDER GRANTING MOTION
FOR DEFAULT JUDGMENT
AGAINST DEFENDANT
MARC DILORENZO, TRUSTEE**

Defendants.

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This Cause is before the Court upon Plaintiff's Motion for Default Judgment against defendant Marc DiLorenzo, Trustee. The Court has considered the Motion, the pertinent portions of the record and is otherwise fully advised in the premises. Being fully advised, the Court ORDERS and ADJUDGES that said motion be, and the same is hereby, GRANTED.
DONE AND ADJUDGED in chambers at the United States District Courthouse, New York, New York, this ____ day of _____, 2010.

HONORABLE DEBORAH A. BATTS
UNITED STATES DISTRICT JUDGE

Copies provided to:

Counsel of record